

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Waste Management

(New Administrative Regulation)

401 KAR 101:010. Contractor certification.

RELATES TO: KRS 224.01-410, 29 C.F.R. 1926.50 - 1926.65

STATUTORY AUTHORITY: KRS 224.01-410(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410 requires the cabinet to promulgate administrative regulations for the cleanup of methamphetamine contaminated properties. This administrative regulation establishes the criteria for contractor certification and issuance, suspension and revocation of certification.

Section 1. Applicability. (1)(a) Sections 2 and 3 of this administrative regulation shall apply to all contractors who become certified by the cabinet to clean up methamphetamine contaminated properties after July 15, 2008.

(b) Contractors certified by the cabinet to clean up methamphetamine contaminated properties, prior to July 15, 2008, who do not maintain certification shall be re-certified as established in Sections 2 and 3 of this administrative regulation.

(2) Sections 4 through 6 of this administrative regulation shall apply to all contractors regardless of certification date.

Section 2. Certification Requirements. (1) Applicants for certified contractor shall:

1 (a) Complete and submit Certified Contractor Application, DEP 6079, January 2009 to
2 the cabinet for review;

3 (b) Obtain financial assurance pursuant to KRS 224.01-410(8)(a) and 401 KAR 101:020;

4 (c) Provide proof to the cabinet of liability insurance policy of at least \$250,000.00,
5 pursuant to KRS 224.10-410(8)(a)3; and

6 (d) Certify that decontamination shall be performed in accordance with 803 KAR 2:403
7 and 29 C.F.R. 1926.50-1926.65. Applicants shall provide the following for review:

8 1. Forty (40) hour HAZWOPER Certification for all personnel performing
9 decontamination services on methamphetamine contaminated properties; and

10 2. Eight (8) hour HAZWOPER refresher training certificates for all personnel performing
11 decontamination services on methamphetamine contaminated properties.

12 (2) The cabinet shall review all contractor certification requirements once a completed
13 application has been submitted; if a complete application is not submitted within six (6) months a
14 new application shall be required.

15 (3)(a) Certified contractors shall submit to the cabinet copies of forty (40) hour
16 HAZWOPER Certification or current eight (8) hour HAZWOPER refresher certificates for all
17 personnel performing decontamination services on an annual basis.

18 (b) Failure to submit this information shall result in suspension of certification.

19 (4) Certified contractors shall report any changes in application information to the
20 Division of Waste Management, such as change of the following:

21 (a) Address;

22 (b) Financial assurance; or

23 (c) Liability insurance, within thirty (30) days of the change.

1 Section 3. Issuance of Certificate. (1) Upon completion, review, and approval of the
2 application, the contractor shall receive the following:

3 (a) A certification letter from the cabinet signed by the director; and

4 (b) A copy of Kentucky Clean-up Guidance for Methamphetamine Contaminated
5 Properties, December 2008.

6 (2) The cabinet shall maintain a list of certified contractors for methamphetamine
7 contaminated properties on the division's web page.

8 Section 4. Suspension of Certification.

9 (1) A certification shall be suspended, effective immediately, upon one (1) or more of the
10 following:

11 (a) The financial assurance as required by 401 KAR 101:020 is no longer held in full by
12 the contractor; or

13 (b) Personnel for the contractor have not submitted the certification pursuant to Section
14 2(1)(d) of this administrative regulation to the cabinet.

15 (2) A certification shall be reinstated if the contractor comes back into compliance with
16 the requirements of 401 KAR 101:020 and this administrative regulation and provides written
17 documentation of such compliance to the cabinet.

18 Section 5. Revocation of Certification. (1) A certification shall be revoked:

19 (a) If the contractor certification is suspended for more than 180 days; or

20 (b) If the contractor is fraudulent or deceitful in the submission of inaccurate data or
21 qualifications.

22 (2) If the contractor's certification is revoked the cabinet shall collect the forfeited financial
23 assurance of any contractor found to be in violation, and the cabinet shall use the forfeited financial

1 assurance to decontaminate methamphetamine contaminated properties. Pursuant to KRS 224.01-
2 410(8)(c).

3 (3) Contractors who have a certification revoked pursuant to this administrative regulation
4 shall not be eligible to be recertified by the cabinet.

5 Section 6. Termination of certification. (1) A certified contractor who wishes to terminate
6 certification for decontamination services shall submit a request to the cabinet to terminate
7 certification.

8 (2) The request shall be reviewed by the cabinet.

9 (3) Upon verification that all work has been completed in compliance with KRS 224.01-
10 410, and all decontamination services have ceased, the cabinet shall grant the termination of
11 certification and release the contractor of financial assurance requirements.

12 Section 7. Incorporation by Reference. (1) The following material is incorporated by
13 reference:

14 (a) "Certified Contractor Application," DEP 6079, January 2009;

15 (b) "Kentucky Clean-up Guidance for Methamphetamine Contaminated Properties,"
16 January 2009.

17 (2) This material may be inspected, copied, or obtained, subject too applicable copyright
18 law, at Division of Waste Management, 200 Fair Oaks, 2nd Floor, Frankfort, Kentucky, 40601,
19 Monday through Friday, 8:00 a.m. to 4:30 p.m. or on the Division's website www.waste.ky.gov.

401 KAR 101:010 approved for filing.

Date

Hank List, Deputy Secretary
Signing for
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Tim Hubbard, Assistant Director
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Frankfort, KY 40601
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does:

This administrative regulation establishes criteria for certification of contractors who clean up methamphetamine contaminated property.
 - (b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish criteria for certification of contractors who clean up methamphetamine contaminated property.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing criteria for certification of contractors who clean up methamphetamine contaminated property.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statute by establishing criteria for certification of contractors who clean up methamphetamine contaminated property.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation:

This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation:

This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes:

This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes:

This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects individuals who want to become certified contractors for the clean up of methamphetamine contaminated properties.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Individuals who are wishing to become certified contractors will have to meet the requirements of Sections 2 and 3 of this administrative regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Certified contractors will have to cover the cost of HAZWOPER 40-hour and 8 hour refresher training courses. The cost for the HAZWOPER 40-hour training course is \$2500.00 and the 8-hour refresher is \$1500.00.
Contractors will also have to post financial assurance for \$100,000 for Tiers 1 through 3

and \$250,000 for Tier 4 cleanups. The cost associated with posting financial assurance will vary depending on the financial mechanism the contractor chooses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The contractors will become certified to clean up methamphetamine contaminated properties which will generate revenue for the contractor.

- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The initial cost to the administrative body to implement this administrative regulation is \$16,000.00-\$17,000.00.

(b) On a continuing basis:

The cost to the administrative body to implement this regulation on a continuing basis would be \$5,000.00-\$5,500.00 per year for the contractors certification portion of methamphetamine cleanup program.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Division of Waste Management applies for a federal EPA Targeted Brownfield Assistance (TBA) grant, which is used to cover the administrative costs of this program.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There are no fees associated with this administrative regulation.

- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

There are no fees associated with this administrative regulation.

- (9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is applied to financial assurance requirements for certified contractors all other requirements are the same. The financial assurance requirements are tiered because of the additional hazards associated with increased levels of contamination in the higher tiered response levels.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 101:010

Contact Person: Tim Hubbard, Assistant Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?
Yes x No _____
If yes, complete questions 2-4.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky State Police, local law enforcement, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.01-410
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
This is the contractor certification regulation and should not generate revenue.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
This is the contractor certification regulation and should not generate revenue.
 - (c) How much will it cost to administer this program for the first year?
The initial cost to the administrative body to implement this administrative regulation was \$16,000.00-\$17,000.00.
 - (d) How much will it cost to administer this program for subsequent years?
The cost to the administrative body to implement this regulation on a continuing basis would be \$5,000.00-\$5,500.00 per year for the contractor's certification portion of methamphetamine cleanup program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DETAILED SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

I. This administrative regulation incorporates by reference the Certified Contractor Application, DEP 6079, January 2009. This document will be used by individuals or businesses who want to become certified contractors to clean up methamphetamine contaminated properties within Kentucky.

This document consists of 2 pages.

II. This administrative regulation incorporates by reference the Kentucky Clean-up Guidance for Methamphetamine Contaminated Properties,” January 2009. This document will be used as cleanup guidance for contractors who are certified to cleanup methamphetamine contaminated properties.

This document consists of 44 pages.